a

SENTUL MURNI SDN BHD

v.

AHMAD AMIRUDIN KAMARUDIN & ORS

b

HIGH COURT MALAYA, KUALA LUMPUR
RK NATHAN J
[CIVIL SUIT NO: S2-22-157-1996]
31 JULY 1998

c ***LAND LAW:*** *Malay reservations - Revocation of - Land purchased by plaintiff - Whether revoked of Malay Reserve status*

d ***LAND LAW:*** *Adverse possession - Whether there was adverse possession - Whether there was consent from state authority to occupy land - Whether adverse possession against the state is prohibited - National Land Code 1965, s. 48 - Whether adverse possession did not arise as title of land had passed to another*

LAND LAW: *Sale of land - Claim for vacant possession - Whether sale was subject to defendants' occupation of land - Whether defendants had an equity in land - Whether defendants' equity was subject to legal ownership*

e The plaintiff had purchased a piece of land ('the land') with the defendants living on the land. The plaintiff had purchased the land from one STLR Sdn Bhd. Prior to this, the land had belonged to the government.

f The plaintiff claimed that whilst the land was Malay Reserve Land initially, this status was cancelled on 22 June 1932. This was confirmed by PW1, the assistant land administrator of the Federal Territory, who also confirmed that those staying on the land including the defendants were squatters. As such, the plaintiff claimed that the defendants were trespassers and amongst the prayers sought for were vacant possession of the land and special damages.

g The defendants denied that they were trespassers on the land. They contended that they were lawful occupants on the land coupled with an equity. The defendants claimed that the plaintiff ought to have known of the equity which had long existed in favour of the defendants before the plaintiff had purchased the land. They also contended that their continuous occupation and possession h of the land was acquiesced by the state authority, the predecessor of the plaintiff and gave particulars of such acquiescence. The defendants claimed that based on the said acquiescence, they had expended money and labour in order to improve and develop the land.

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In addition to the above, the defendants claimed that the issue of title to STLR Sdn Bhd was null and void as the alienation had breached the law pertaining to Malay Reserve Land and the Federal Constitution. Since 1916, the land had been declared as Malay Reserve Land and the defendants contended that all dealings and transfers of the land should be governed by laws pertaining to Malay Reserve Land. As the alienation was void *ab initio*, the subsequent transfer of the land to the plaintiff was also null and void.

The defendants asked for the plaintiff's claim to be dismissed and counter claimed accordingly.

Held:

[1] On the defendants' contention that the land referred to by PW1 was not revoked of its Malay Reserve status, there was no reason not to accept the evidence of PW4, a land surveyor, the plaintiff's expert witness, that the land was degazetted by gazette notification No 4851/1932 and was therefore not a Malay Reserve Land. Further, the evidence of PW4 was also corroborated. On the other hand, the defendants led no evidence to contradict this and relied on their cross-examination. In the circumstances, from the evidence adduced, the land was no longer Malay Reserve Land.

[2] There was certainly license and consent from the state authority that the defendants could occupy or continue to occupy the land. There was no evidence that the land executive committee of the Federal Territory had changed or revoked its policy in relation to the occupation of the Malay residents in Kampung Chubadak at any time. Whilst s. 48 of the NLC expressly prohibits any adverse possession against the state, the land in question had passed from the state to STLR Sdn Bhd and then to the present plaintiff. As such, there was no question of any adverse possession against the state coming into question.

[3] The defendants were seeking to enforce their equity against the plaintiff who took over ownership of the land with full notice of the existence of the defendants' equity. Whilst the defendants had such an equity, the equity was subject to legal ownership of the land pursuant to the NLC, for which the plaintiff had given valid consideration. The plaintiff was, therefore, entitled to vacant possession of the land subject to the plaintiff compensating the defendants.

[4] The plaintiff's claim for special damages was rejected as it had not been sufficiently proved. No documentary evidence was tendered in support except for mere claims stated in evidence. Although attempts were made to tender documents in support of this claim during trial, they were

rejected as the plaintiff had every opportunity to disclose all the documents to the defendants during the case management process.

[Order accordingly.]

Cases referred to:

Bohari b Taib & Ors v. Pengarah Tanah Galian Selangor [1991] 1 CLJ 647 ***(refd)***

Chong Wooi Leong & Ors v. Lebbey Sdn Bhd [1998] 3 CLJ 685 ***(refd)***

Government of Negeri Sembilan & Anor v. Yap Chong Lan & Ors [1984] 2 CLJ 150 ***(refd)***

Lesco Development Corpn Sdn Bhd v. Yap Chong Lan & Ors [1984] 2 MLJ 123 ***(refd)***

Pengarah Tanah dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd [1979] 1 MLJ 135 ***(refd)***

Lebbey Sdn Bhd v. Chong Wooi Leong & Anor [1998] 1 AMR 497 ***(refd)***

Newbury District Council v. Secretary of State for the Environment [1981] AC 578 ***(refd)***

Shaheen bt Abu Bakar v. Perbadanan Kemajuan Negeri Selangor [1998] 4 MLJ 233 ***(refd)***

Legislation referred to:

Evidence Act 1950, s. 123

National Land Code 1965, s. 48

Rules of the High Court 1980, O. 89 r. 1

Other source referred to:

A Practical Approach to Evidence in Malaysia and Singapore, 1993 edn, p 152

For the plaintiff - T Gunaseelan (G Gunaseelan with him); M/s G Gunaseelan & Assoc

For the defendants - R Sivarasa (WY Tan with him); M/s Daim & Gamany

Reported by Usha Thiagarajah

JUDGMENT

RK Nathan J:

Facts

The plaintiff is the registered owner of the land known as H.S.(D) 66601 P.T. 2473 Mukim Setapak, District of Wilayah Persekutuan which consists of 487,533 square feet of land (the said land). The said land was registered in the plaintiff's name on 6 July 1990. At that time, the defendants with many others were living on the said land. The plaintiff purchased the said land from one STLR Sdn Bhd. STLR Sdn Bhd became the owner of the said land on 26 October 1985. Prior to that date, the land belonged to the government.

Case For The Plaintiff

The plaintiff contended that whilst the said land was Malay Reserve Land initially, such a status was cancelled on 22 June 1932. The plaintiff called PW1, the penolong pentadbir tanah Wilayah Persekutuan, Zahrullail bin Hj. Ayub, who confirmed this by referring to Gazette Notification No. 4851 dated 22 June 1932. He confirmed that those staying on the said land including the defendants were squatters. The plaintiff contended that it had built low-cost houses for the remaining squatters who had moved out. The plaintiff also said it had offered low-cost houses to the 2nd, 3rd and 4th defendants at RM25,000 based on the census list provided by the Jabatan Perdana Menteri in respect of those living on the said land and who had registered themselves during the census. The said three defendants had rejected the offer. No offer was made to the 1st defendant as his name was not on the list provided. Claiming that the defendants were trespassers, the plaintiff therefore prayed for vacant possession of the said land, mesne profit from 11 October 1993 until possession is delivered up, damages for trespass and special damages amounting to RM3,817,030.13 with costs.

Case For Defendants

The defendants denied that they were trespassers on the said land. They contend that they are the lawful occupants of the said land as licensees coupled with an equity. The defendants' case is that before being the registered owner of the said land the plaintiff knew or ought to have known of the equity which had long existed in favour of the defendants. They also contend that their continuous occupation and possession of the said land was known to or expressly and/or impliedly acquiesced and/or encouraged by the state authority or Dewan Bandaraya Kuala Lumpur (DBKL), the predecessor of the plaintiff. Giving particulars of such acquiescence, encouragement or approval, the defendants stated that between 1960 and 1990 the following amenities were provided by the authorities, namely, a town hall, three mosques, water supply, a clinic, tarred roads, electricity and telephone services, a second town hall built by DBKL, an erection of a building to conduct women's development activities and religious schools. They also led evidence to show that this village called Kampung Cubadak was self-governed and self-administered. Prior to the formation of Wilayah Persekutuan, the Selangor state government formed a body known as Jawatankuasa Kemajuan dan Keselamatan Kampung (JKKK) in the village which was headed by the ketua kampung. When Wilayah Persekutuan was established in 1970, the administration of JKKK was then replaced by DBKL's officers when the post of ketua kampung was abolished. Nevertheless in 1987 the post of ketua kampung was revived and the former ketua kampung was reappointed by the Ministry of Wilayah Persekutuan to

administer the village. After his death the village has been administered by a new JKKK. In the 1960s, the Kuala Lumpur district officer, Encik Ridzuan, prepared a layout plan for the former mining land at which Kampung Chubadak Tambahan and Kampung Puah Seberang are situated. The objective of the said plan was to sub-divide the said land into various lots which would be allocated to the residents occupying the land. This was announced to the village residents at a meeting held by the district officer.

On 10 January 1976, the Jawatankuasa Kerja Tanah Wilayah Persekutuan in its meeting, approved the allocation of Lot 3912 Mukim Setapak comprising of approximately 114 acres to the Malay residents who were occupying the said land. There was evidence to show that Lot 3912 was the predecessor of H.S.(D) 66601 Lot P.T. No. 2473 as both were of the same location.

Between the 1960s and 1990s, politicians, royal families and various authorities had visited this village. They, *inter alia*, included the former Prime Minister, Allahyarham Tunku Abdul Rahman, the second Yang Di Pertuan Agong, the former Chief Minister of Selangor, Dato' Harun Idris, officers from DBKL, Pejabat Tanah/Daerah Wilayah Persekutuan, Tenaga Nasional, Jabatan Bekalan Air, Telekom, and Members of Parliament. During the official launch of the clinic (Klinik Kesihatan Kanak-Kanak dan Ibu) in Kampung Chubadak Tambahan, Dato' Harun Idris had promised that the Selangor state would take certain measures so as to enable the residents of Kampung Chubadak and Kampung Puah Seberang to obtain ownership of the land which they were occupying.

Based on the said acquiescence, encouragement and approval, the defendants expended money and labour in order to improve and develop the land in Kampung Chubadak Tambahan which was a former mining land with bushes growing in abundance. The continued occupation and possession by the defendants of the said land, and all the efforts they had put into the development of the said land, were known to the state authority, DBKL, the various other authorities and to the predecessors of the plaintiff. Also, the said occupation and possession was expressly and/or impliedly encouraged by them.

The defendants contend that the issue of title to STLR Sdn Bhd on 6 July 1990 is null and void as the alienation had breached the law pertaining to Malay Reserve Land and the Federal Constitution. Since 1916 the said land had been declared as Malay Reserve Land and the defendants contend that all dealings and transfers of the said land should be governed by laws pertaining to Malay Reserve Land. Since the alienation was *void ab initio*, the subsequent transfer of the said land to the plaintiff was also null and void.

The defendants thus asked for the plaintiff's claim to be dismissed and counterclaimed as follows:

(a) A declaration that the issuance of title to STLR Sdn Bhd and the subsequent transfer to the plaintiff is null and void.

(b) In the alternative, declarations as follows:

(i) That the plaintiff is bound by equity (which exists between the predecessors-in-title of the said land and the defendants) when the land held under H.S.(D) 66601 Lot P.T. 2473, Mukim Setapak, Daerah Wilayah Persekutuan, Negeri Wilayah Persekutuan was transferred from the predecessors-in-title to the plaintiff.

(ii) That the plaintiff is bound to satisfy the equity existing in favour of the defendants. The equity consists of the efforts expended by the defendants on their land and houses, current market value of the defendants' houses and the cost of relocating the defendants.

(iii) That the defendants are entitled to the exclusive possession of the land occupied by them so long as the plaintiff has not satisfied the equity existing in favour of the defendants by paying to the defendants, reasonable damages and compensation which shall be assessed.

(c) An order for compensation and damages equivalent to the value of the equity which the plaintiff is bound to pay to the defendants.

(d) Costs of the action be borne by the plaintiff.

(e) Further reliefs which the court thinks fit.

Findings Of The Court

Is The Land Referred To As H.S.(D) 66601 P.T. 2473 (The Said Land) A Malay Reserve Land?

The defendants contend that the gazette notification No. 4851 referred to by PW1 does not refer to the land No. P.T. 2473. PW1 had stated in cross-examination that the land held under P.T. 2473 was included in the general Gombak district which once upon a time was gazetted as Malay Reserve but subsequently revoked of its Malay Reserve status and as such the Malay Reserve status attached to land held under P.T. 2473 has also been revoked by the said gazette notification. PW4, Seah Kok Seang @ Cheah Si Ba, a land surveyor was called by the plaintiff as its expert witness. He was asked to investigate and he produced a report with plans of Lot 17832, Mukim

Setapak, which were admitted in evidence (see CABD 1-14). Having purchased gazette notifications No. 113/1916 and 4851/1932 he plotted out the boundary as stated in these two gazette notifications onto the plan. From his investigations he was satisfied that Lot 17832 Mukim Setapak was degazetted by gazette notification No. 4851/1932. Since Lot P.T. 2473 is found within Lot No. 17832, therefore Lot P.T. 2473 is not a Malay Reserve Land. In spite of vigorous cross-examination I am unable to find any reason not to accept this expert's evidence. When questioned as to whether he had indeed examined the plan relating to Lot 17832, he even produced the said plan in court. I also find that this evidence of PW4 is corroborated by a letter dated 30 January 1996 from the Pengarah Ukur dan Pemetaan, Wilayah Persekutuan, confirming that Lot 17832 was degazetted from Malay Reserve status as of 22 June 1932 by way of gazette notification No. 4851 (see CABD 15). Even further corroboration is found in the letter from the director of Land and Mines dated 9 February 1996 confirming that Lot 17832 had been degazetted (see CABD 16-17).

On the other hand, the defendants led no evidence to contradict this save and except that they relied on the able cross-examination of Mr. Sivarasa to break ground. Further PW1 had already stated that Lot No. H.S.(D) 66601 P.T. 2473 Mukim of Setapak had been duly registered in the year 1990. That is why the said number was not found in the gazette notification 4851 which was done in 1932. He confirmed that from his file he was able to say that Kampung Chubadak and Kampung Chubadak Tambahan were outside the Malay Reservation and that in the said kampung there were about 500 temporary houses all of which were inhabited by persons of the Malay race.

Request For Inspection Of Confidential File

At this stage Mr. Sivarasa made an application to enable him to look at the file that PW1 was referring to. Mr. Gunaseelan objected pursuant to s. 123 of the Evidence Act 1950. The said section reads:

> 123 Evidence as to affairs of state
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> No one shall be permitted to produce any unpublished official records relating to affairs of State, or to give any evidence derived therefrom, except with the permission of the officer at the head of the department concerned, who shall give or withhold permission as he thinks fit, subject, however, to the control of a Minister in the case of a department of the Government of Malaysia, and of the Chief Minister in the case of a department of a State Government.

He referred to p. 152 of my book *"A Practical Approach to Evidence in Malaysia and Singapore"* 1993 edn, wherein I had said that:

> ... In Malaysia, objection as to production as well as admissibility contemplated in sections 123 and 162 of the Evidence Act is decided by the court in an inquiry of all available evidence. This is because the court understands better than all others the process of balancing competing considerations. It has power to call for the documents, examine them, and determine for itself the validity of the claim. Unless the court is satisfied that there exists a valid basis for assertion of the privilege, the evidence must be produced. This strikes a legitimate balance between the public and private interest. Where there is a danger that disclosure will divulge, say, state secrets in military and international affairs or Cabinet documents, or departmental policy documents, private interest must give way.

Mr. Sivarasa argued that s. 123 relates to the production of the documents whereas at this stage all he wanted was to examine the file under the supervision of the court. Having looked at that part of the file relating to Mr. Sivarasa's request, I noticed confidential minuting by the State Executive Committee (Exco). In the circumstances, I prohibited the said file from being produced even for inspection by both parties. From all the evidence adduced I am satisfied that the said land is no longer Malay Reserve Land.

Have The Defendants Acquired Equitable Rights By Acquiescence From The State Authority To Occupy The Land?

The defendants called DW6, Haji Jailani bin Md. Din, who was 76 years old. He said he was born in Kampung Chubadak and had been very much involved with the administration of the said village until to date. He had gathered from his forefathers that Kampung Chubadak had a long history of about 150 years with its pioneers originating from Sebarang in West Sumatera. The pioneers had cleared and opened up an area of 500 acres and developed the land and organised the village known as Kampung Chubadak. He confirmed that in 1916 the said land was declared a Malay Reserve Land when Dato' Koyan became the Penghulu of Mukim Setapak. The village was administered by a "ketua kampung" elected by the villagers from 1890 until 1957. In 1957 the JKKK was formed in accordance with the guidelines provided by the state of Selangor for the purpose of administration. When the Federal Territory was established on 1 February 1974 DBKL then took over the administrative functions of Kampung Chubadak, replacing the JKKK. In 1987 the Ministry of the Federal Territory revived the post of ketua kampung and re-appointed Haji Khatib as the ketua kampung until his demise in 1990. With effect from 1 January 1991 the village residents formed a committee named as JKKK, Kampung Chubadak, Sentul Pasar, to administer the village on a voluntary basis. The defendants led evidence as to the various personalities who attended the village as stated earlier. Various facilities were also provided as stated earlier. The

plaintiff referred me to *Lebbey Sdn Bhd v. Chong Wooi Leong & Anor* [1998] 1 AMR 497 affirmed by the Court of Appeal (see *Chong Wooi Leong & Ors v. Lebbey Sdn Bhd* [1998] 2 MLJ 644 CA) where Abdul Wahab Patail J held that "state authority" under the National Land Code (NLC) is defined for the purpose of Selangor, as the Ruler. For practical purposes this means the Ruler acts upon the recommendation of the Exco of the state. His Lordship went on to hold that even the district officer has no authority to bind the state authority as he is not a party recognised by the NLC. In dealing with similar facts his Lordship held that the defendants had not only come onto the land without consent, but have also remained thereon without the consent of the state authority.

The plaintiff in the case before me contended that even if the former Menteri Besar Dato' Harun Idris had promised those settling on the land that they would be allotted plots of land, that was not sufficient. Indeed Dato' Harun attended court as a witness and testified to that effect. Even in *Lebbey's* case various facilities were provided, such as piped water, electricity and even a surau was built. In fact after a fire in 1991 the district officer even allowed the affected defendants to rebuild their houses. During election time, politicians promised that temporary occupation licence would be given, thus resulting in a committee of residents being set up and which committee did indeed apply for a temporary occupation licence. Abdul Wahab Patail J went on to hold that the knowledge or acquiescence of other state authorities or personalities was wholly irrelevant to the NLC. He also held that even if there was an application made for a temporary occupation licence, a mere submission of an application can never amount to consent of such occupation by the state authority until the licence is actually issued, because the NLC makes no provision for any provisional occupation until approval or licence is issued. The learned judge was no doubt guided by the decision in *Government of Negeri Sembilan & Anor v. Yap Chong Lan & Ors* [1984] 2 CLJ 150; *Lesco Development Corpn Sdn Bhd v. Yap Chong Lan & Ors* [1984] 2 MLJ 123 which held that s. 48 of the NLC clearly and unambiguously states that no title to state land shall be acquired by possession, unlawful occupation or occupation under any licence for any period whatsoever. As said by Abdoolcader FJ at p. 128:

> ... These statutory provisions by themselves would appear to provide a complete answer to and inhibit the interpolation of any equity in regard to the respondents' claim.

However, in *Newbury District Council v. Secretary of State for the Environment* [1981] AC 578 Lord Scarman said at p. 616:

> In the field of property law, equity is a potent protection of private rights, operating upon the conscience of those who have notice of their existence. But this is no reason for extending it into the public law of planning control, which binds everyone.

A very recent decision of the Federal Court (as yet unreported) needs to be considered. It is *Shaheen bt Abu Bakar v. Perbadanan Kemajuan Negeri Selangor* Federal Court Civil Appeal No. 02-3-96(B) and the written judgment is dated 2 June 1998. The facts are very succinctly set out in the judgment of the court and it reads:

> The respondent, Perbadanan Kemajuan Negeri Selangor (PKNS) filed an application by originating summons under Order 89 Rule 1 in the High Court Shah Alam to evict the defendants from a piece of land known as Lot PKNS/PA 124 in Kawasan, 1, 2, 3, 4, 5, 6, 7, 8, & 9 in Mukim Sungai Buluh, in the district of Petaling. The defendants were unknown persons who resided on the said land. Subsequently, the appellant, Shaheen binti Abu Bakar (Shaheen) applied to be included as a defendant. Her application was allowed and she was made the second defendant. She also resided on the said land.
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> At the commencement of the hearing in the High Court, the case against the unknown defendants was settled and the learned Judge recorded the terms of the settlement. Shaheen was not included in the settlement, and the learned Judge proceeded to hear the application against Shaheen. The learned Judge allowed PKNS' application against Shaheen with costs.
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> Shaheen appealed to the Court of Appeal. There were two other appeals against the decision of the learned Judge. The respondent in the two other appeals was Punca Alam Sdn. Bhd. (Punca Alam). The three appeals were heard together. The Court of Appeal dismissed the three appeals with costs. See [1996] 1 MLJ 825. Shaheen filed an application in this Court for leave to appeal against the decision of the Court of Appeal. Leave was granted and the present appeal is between Shaheen and PKNS.

In that case the said land was given to PKNS by the Selangor state government. On 18 July 1994 PKNS entered into a sale and purchase agreement with Punca Alam and thus sold 248 acres of the said land to Punca Alam. PKNS was to have had vacant possession of the said land. However, their surveyors found illegal housing structures on the said land. Affidavit evidence was led that the appellant's land was part of that land owned by PKNS and that housing structures were built on the said land without the consent or approval of the Land Office and Majlis Daerah, Petaling Jaya.

On the other hand, the appellant contended that in 1982 the Penghulu of Mukim Sg. Buluh encouraged her father, Hj. Abu Bakar, and others to open up new land for cultivation on the said land. These pioneers cleared the jungle,

fixed boundaries and dug canals and in 1983 her father built a permanent housing structure on his land and in addition thereto he and the other settlers constructed fish ponds which were registered by the Fisheries Department of the Federal Territory. The department also gave them different types of fish to breed in the ponds. In 1985 her father gave the said land to her. She further claimed in her affidavit that the state authority built a surau for the settlers on the said land. The area then soon came to be known as Kampung Sungei Rumput. It was her case that she and the other settlers had occupied the said land with the consent and/or acquiescence of the owner of the said land, namely, the state government of Selangor. Contending that PKNS knew about the said settlers on the said land, she averred that PKNS did not object to their occupation of the said land by the settlers.

This case dealt with the issue relating to O. 89 r. 1 of the Rules of the High Court 1980 (the RHC). O. 89 r. 1 reads:

> 1 Proceedings to be brought by originating summons
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> Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this Order.

In this case the Federal Court referred to another Federal Court decision. In *Bohari b. Taib & Ors v. Pengarah Tanah Galian Selangor* [1991] 1 MLJ 343 where the facts were similar and where the case was for summary judgment by the respondent, the Federal Court held that the alleged continued consent of the state government to these settlers' occupation notwithstanding the expiry of the temporary occupation licences was a serious question that ought to be tried and that therefore summary proceedings by way of affidavit evidence was not the right move. His Lordship Mohamed Azmi SCJ went on to say at p. 346:

> ... In our opinion, for the purpose of the summary procedure, a distinction should be made between squatters simpliciter who have no rights whatsoever, and occupiers with licence or consent, and as well as tenants and licensees holding over. It may be impossible to establish the existence of any triable issue in the case of bare squatters, but the position of tenants and licensees holding over, or persons occupying with implied or expressed consent of the owner may be different. On the facts, we hold that there are triable issues on the absence of either licence or consent as alleged by the respondent. Evidence *viva voce* is required not only on the alleged consent of the respondent to the appellants' occupation rendering their entry lawful, but also on whether the approval of the state authority to the alienation of the lands to the appellants

and the other occupiers had been given in 1980 under s. 42 of the National Land Code 1965.

Applying the same principle set by Mohamed Azmi SCJ the Federal Court in this case also held that the question as to whether the settlers entered the said land with the consent of the relevant state authority was therefore a triable issue. The Federal Court held that from the evidence, the Menteri Besar knew of the development in Kampung Sungai Rumput. It went on to hold that the state government took no action at all against the settlers. The Federal Court went on to say:

> In our view Shaheen's father and the other settlers lived on the said land with the implicit consent of the State Government. It was only after the Sale and Purchase Agreement was concluded on 18 July 1994 that the question of removing the settlers from the kampung arose ...

It further held:

> ... if the initial entry of the settlers on the said land was unlawful, they had committed an offence under Section 425(1) of the National Land Code. They could also be evicted under Order 89 for being squatters simpliciter. From the evidence the State Government knew of their presence on the said land from December 1981. No action was taken to charge them under the National Land Code for illegally occupying the said land. No proceeding was taken to evict them under Order 89. From January 1988 the Menteri Besar knew about the settlers. He approved the renovation of their **surau**. He knew that the settlers were provided with water supply, roads and a community hall. As stated earlier, when the land was given to PKNS, it knew about the settlers. In our opinion there is an arguable case that the settlers occupied the said land with the acquiescence of the State Authority.
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> To conclude our judgment, we find that the settlers in Kampung Sungai Rumput were not squatters simpliciter. There is a strong arguable case that they occupied the said land with the implicit consent of the State Authority. Even if their entry on the said land was unlawful, there is an arguable case that they occupied the said land with the acquiescence of the State Authority. It was for these reasons that we decided to allow the appeal.

The case before me is not one under O. 89 r. 1 of the RHC. It was a full trial with witnesses adducing oral evidence. The four defendants testified as to how they came on to the land. There is evidence before me which was unchallenged. When the 1st defendant settled at Kampung Chubadak Tambahan he was about 20 years old. When he gave evidence he was 47. Initially he lived with his brother. Then he built his own house in one year. The house was 2½ feet from the ground and the built-up area was about 728 square feet. He then made improvements to the house. In 1985 he extended the back

portion of the house and also built a small factory at the rear portion as he was a food supplier then. In 1986 he again extended the house by another 14 feet, thus increasing the square feet by 196. A year later he built a porch in front of the house. The total cost was estimated at RM15,000 in 1980. This included labour and materials.

The 2nd defendant came to Kampung Chubadak Tambahan at the age of 30 from Malacca. He too built his own house. He completed his house in 1977. In 1980 he renovated his house by adding a kitchen to the back portion. In 1990 he extended the living room which he again extended in 1997. He had spent about RM18,000 on materials and labour.

The 3rd defendant came to this kampung at age 31. He bought the house in the kampung from a friend for RM400 in 1973. The size of the house then was 25 feet by 20 feet. He then carried out some renovations in 1980 and added two rooms. The total cost of the renovations was about RM3,300.

The 4th defendant was originally from Perak. He came to this kampung in 1969 when he was 26 years old. It took him three days to build his house in this kampung which he completed in November 1969. Its area was 15 feet by 24 feet in length. He then carried out three further renovations amounting to RM12,000. Apart from telephone service there is also water and electricity supply to his house just as there is supply of water and electricity to all the houses. He had spent about RM13,200 for materials and labour. These facts are unchallenged. Dato' Harun bin Idris testified that he was the Menteri Besar of Selangor between 1964 - 1978. He had visited this Kampung Chubadak two or three times. On one occasion it was an official visit to open a clinic. This was in 1974. He had informed the residents that the state government was going to issue separate titles to the settlers and requested them to make their respective applications. Dato' Harun then referred to minutes of a meeting dated 9 December 1976. The said minutes (CABD 94-96) indicated that there was approval given by the State Executive Committee of Selangor on 9 August 1962 to alienate the land held under Lot No. 3912 Mukim of Setapak to the Malay occupants residing in the land. Subsequently on 10 January 1976 the Land Executive Committee of Wilayah Persekutuan (Jawatankuasa Kerja Tanah Wilayah Persekutuan) expressly agreed that the said approval of the State Executive Committee of Selangor be carried out by the collector of land revenue of Wilayah Persekutuan. This was documented in the form of a letter dated 9 December 1996 from DW8, Dato' Haji Idris bin Ibrahim, the then Member of Parliament for Setapak. This letter was distributed to the residents of Kampung Chubadak. The evidence to this effect by both Dato' Harun Idris and Dato' Haji Idris bin Ibrahim remained unchallenged. In *Pengarah Tanah*

dan Galian, Wilayah Persekutuan v. Sri Lempah Enterprise Sdn Bhd [1979] 1 MLJ 135 the then Federal Court held that the Land Executive Committee of the Federal Territory was the equivalent of the State Commissioners for Lands and Mines in respect of the other states provided for under s. 12 of the NLC.

At this stage, it is pertinent to note that PW1 had confirmed in his evidence that Lot 3912 forms part of Kampung Chubadak. In fact he identified the boundary of Lot 3912 which he marked in blue in the court copy and marked it as being within Lot 17832 (see CABD 14). I find that there is an express undertaking given in 1976 by the Land Executive Committee of Wilayah Persekutuan that part of the land in Kampung Chubadak would be alienated to the Malay residents occupying the land in accordance with the Selangor State Exco's decision in 1962. I also find that according to Dato' Harun Idris, the former Menteri Besar of Selangor, it was based on the promise given by the Selangor State Exco in 1962 that he promised the residents of Kampung Chubadak ownership of the land occupied by them.

On the facts so far established I find that there is certainly licence and consent from the state authority that the defendants can occupy or continue to occupy the land. There is also no evidence that the Land Executive Committee of Wilayah Persekutuan has changed or revoked its policy in relation to the occupation of the Malay residents in Kampung Chubadak at any time. Whilst s. 48 of the NLC expressly prohibits any adverse possession against the state, the said land in question had passed from the state to STLR Sdn Bhd and then to the present plaintiff. There is no question of any adverse possession against the state coming into question. The defendants herein are seeking to enforce their equity against the plaintiff who took over ownership of the land with full notice of the existence of the defendants' equity. Whilst I have found that the defendants have an equity to be reckoned with, such equity must be subject to the plaintiff's over-riding right to legal ownership of the land pursuant to the NLC for which said purchase the plaintiff had given valid consideration. The plaintiff will therefore have its vacant possession subject to the plaintiff compensating the four defendants for all costs incurred in the construction and renovation of their respective houses, or alternatively the cost of the present value of the said houses to be assessed by an independent valuer to be mutually agreed to by the parties or if they fail to agree, to be appointed by the court, whichever alternative to be decided by the defendants, and all costs incidental to relocating the defendants.

I reject the plaintiff's claim for special damages as the same has not been sufficiently proved. Other than merely making claims as stated in his evidence, PW3, the director of the plaintiff, tendered no documentary evidence in

support. In fact during the trial attempts were made to tender documents in support of this claim. Since I had conducted various pre-trial case managements, the plaintiff had every opportunity to have disclosed all the documents to the defendants. The plaintiff failed to do so. It would make a mockery of the intended pre-trial conferences or case managements if parties were allowed to tender documents at their will during the trial and thereby cause disruptions due to the other party seeking an adjournment to study the documents. In the circumstances, I had rejected the admission of any of the documents that were intended to be tendered allegedly in support of the claim for special damages. The plaintiff cannot merely state that it had suffered a loss of RM22,023,573.20 and ask the court to make that award. It has to prove its claim. That it has failed to do. Having considered all factors I find that it would be fair and just if the plaintiff is made to pay the costs of the counterclaim. Each party to pay its own costs in respect of the main claim.